

TITLE 15. CRIME PREVENTION AND CORRECTIONS

DIVISION 2. BOARD OF PAROLE HEARINGS (formerly known as Board of Prison Terms)

AMENDMENTS TO SECTION 2600.1; SEXUALLY VIOLENT PREDATOR SCREENING, HOLDS, AND ~~PROBABLE—CAUSE~~ HEARING BOARD DETERMINATIONS

INITIAL STATEMENT OF REASONS RN 07-01

INTRODUCTION

Government Code § 12838.4 vests the Board of Parole Hearings with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the former Board of Prison Terms and Narcotic Addict Evaluation Authority, which no longer exist.

Penal Code § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

This proposed regulatory action amends § 2600.1 of the Board's regulations to implement Proposition 83 and Senate Bill 1128, and carry out the intent of those laws, the protection of public safety.

In particular, the proposed regulatory amendments will allow the Board to place a hold on a prisoner or parole for an additional 45 days by making a finding of good cause based on a document review instead of holding a probable cause hearing.

BACKGROUND

Proposition 83, an initiative statute, enacted "The Sexual Predator Punishment and Control Act: Jessica's Law." Proposition 83 was approved by a majority of the voters on November 7, 2006 and became effective the day after the election, which was November 8, 2006.

Section 2 (f) of the Act provides that the "People find and declare it is the intent of the People in enacting the measure to help Californians better protect themselves, their children, and their communities; it is not the intent of the People to embarrass or harass persons convicted of sex offenses."

Section 2 (h) provides that “Californians must take additional steps to monitor sex offenders, to protect the public from them, and to provide adequate penalties for and safeguards against sex offenders, particularly those who prey on children.”

Senate Bill (SB) 1128 enacted the Sex Offender Punishment Control and Containment Act of 2006 as an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and went into effect immediately on September 20, 2006. The Act identified the emergency as “In order to protect the health and safety of the children of California, it is necessary that the statute to take effect immediately.”

Proposition 83 and SB 1128 took effect immediately. Of primary importance in both Acts is the immediate necessity to protect the health and safety of the People of California. The regulations necessary to implement the Acts must also take effect immediately in order to preserve the public peace, health and safety or general welfare and avoid frustration of the Acts intents. Specifically, Title 15, California Code of Regulations section 2600.1, which sets forth procedures for the Board to place holds on persons likely to be sexually violent predators, must be immediately amended to conform with Proposition 83 and SB 1128.

SPECIFIC PURPOSE AND NECESSITY OF REGULATION

The purpose of this regulatory action is to amend section 2600.1 of the Board’s regulations to implement Proposition 83 and Senate Bill 1128, and carry out the intent of those laws, the protection of public safety. Specifically, this regulatory action amends the Board regulations to implements, interprets, and makes specific Proposition 83 and Senate Bill 1128.

The proposed amendments set forth procedures for the Board to place temporary holds on inmates or parolees in revoked status that may require a full evaluation to determine whether that person may be subject to commitment as a sexually violent predator. The proposed amendments allow the Board to meet the public safety objectives of identifying and holding individuals who are subject to screening as potential sexually violent predators.

Specifically, the proposed amendments allow the Board to place a hold on the inmate for an additional 45 days by making a finding of good cause based on document review instead of holding a probable cause hearing. Absent the amendments, the Board is not able to sustain the workload of holding approximately 600 hearings per month plus the backlog that has accrued since Proposition 83, “Jessica’s Law,” became effective November 8, 2006. The increase in the number of cases is due to the statutory changes that became effective through Proposition 83, which increased the number of offenses considered sexually violent offenses and decreased the number of victims from two to one. The consequence of failing to meet the workload of placing the 45-day hold poses a grave risk to public safety because people who are screened as persons likely to be sexually violent predators will be released into society instead of continuing with the civil commitment process. The risk to public safety by sexually violent predators has been clearly articulated in Senate Bill 1128 and Proposition 83.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely on any technical, theoretical, or empirical studies in consideration of the proposed action.

CONSIDERATION OF ALTERNATIVES

The Board has determined that no reasonable alternatives identified or considered would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome than the proposed regulatory action.

EFFECT ON SMALL BUSINESS

The subject of this regulatory action has a direct effect on adult prisoners and parolees. Any impact on small business would be indirect and likely insignificant.